5/14/2024

Addendum # 1 to Bid 002791

Change the above referenced Invitation to Bid to agree with this addendum.

This addendum must be signed and included with bid submission.

_____

The attached BA Addendum is an example of what will be signed and executed upon creation of Purchase Order and the start of the new contract term.

Bidder Inquiries:

1. Would LSUHSC consider extending the due date to May 28, 2024 to allow sufficient time for all vendors to incorporate answers into their response?
A. No, an extension is not being considered.

2. Would LSUHSC please clarify if email bids will be acceptable?
A. Email bids are not acceptable, Bids are to be hand-delivered or mailed. Late bids are not acceptable.

3. What expenses will be involved with the removal of the boxes from the current vendor to the new vendor? Please provide all fees that will be associated with the removal of boxes from any current vendors.
A. Per the current contract, "Upon completion of this contract, all boxed records shall be returned to LSUHSC at no additional cost."
LSUHSC will act as coordinator of transfer of service and boxes to be stored in the event of a new vendor taking over service.

Modification of New Bid Scope:
Section 2.3 of the current bid # 002791 is to hereby read:
The service provider shall provide off site storage of administrative records. Service provider shall store and index or label boxes for identification and retrieval. Services shall be provided during normal business hours, Monday –Friday, 8:00 AM – 5:00 PM (excluding holidays). At the request of LSUHSC, service provider shall pick up boxed files from any designated location on campus and deliver to the off site storage facility. LSUHSC may request the retrieval of any boxed files for next day delivery to requesting department on campus. LSUHSC may request the destruction of boxed files, via secure shredding process upon authorization of LSUHSC, and be provided a certificate of destruction with the invoice. Upon completion of this contract 002791, all boxed records shall be returned to LSUHSC at no additional cost or are to be allowed to be picked up by the new vendor at no additional cost if services are moved to a different vendor.

4. In lieu of humidity controlled storage, Vendor will store LSUHSC's records in temperature controlled storage. Since paper records will not suffer significant deterioration within periods of time far exceeding most retention schedules, will LSUHSC confirm if temperature controlled storage will be sufficient for their needs?
A. Yes, temperature controlled storage will be sufficient.

5. Vendor utilizes secure chain of custody best practices, strict operational procedures, and trained staff to mitigate the risk of lost boxes and late deliveries. Our risk management process ensures a high probability that all deliverables are provided in full compliance with contract requirements, ontime, and within budget. With a proven risk management process in place, will LSUHSC agree to remove the penalty fees within this section? Section 2 – Specific Conditions, 2.6
A. No

6. How does LSUHSC define "order" in this context? Additionally, does this section mean a Vendor is required to pick up materials within 10 days after award of a contract to begin work and not that work must be completed within 10 days?
A. Disregard Item#5 within Invitation to Bid Standard Terms & Conditions, this is a standard terms and conditions boilerplate. The winning bidder is expected to complete the transfer all materials in a reasonable amount of time once the Purchase Order is issued.

7. Would LSUHSC agree that this requirement would not apply to any publicly traded large vendors who are required to operate under established businesses practices? Attachment E; Insurance Requirements; deductibles and self-insured retentions
A. Not applicable

8. Is LSUHSC willing to accept Certificate of Insurance in lieu of providing vendor policies? Attachment E; Insurance Requirements; verification of coverage
A. Yes, a COI is required.

9. Would LSUHSC agree to remove references to specific form numbers so that a Vendor may provide the correct forms that correspond to their insurance policies and standards? Attachment E - Insurance Requirements; minimum scope of insurance
A. Only a Certificate of Insurance is needed and to be included in bid submission.

10. Please advise whether these clauses are applicable to the services that will be provided upon a contract award resulting from this solicitation. Item #29, Federal Clauses (If Applicable)
A. Not applicable

11. Please confirm that this requirement is not applicable to the services that will be provided upon a contract award resulting from this solicitation. Item #39, Cybersecurity Training
A. Confirmed, not applicable, disregard.

12. Section 2.6 contains a Liquidated Damages Provision for late deliveries. Liquidated damages provisions such as this one place an unfair burden on the Vendor because they allow a Customer to recover against the Vendor even where the Customer has suffered no actual measurable loss or damage. Additionally, LSUHSC is entitled to bring a claim against the Vendor in order to recover any actual or measurable damages it suffers as a result of Vendor's breach of contract. While we strive to meet all delivery expectations, there are at times unavoidable delays due to weather, traffic, etc. Should a delivery window be missed we will deliver at the next available opportunity in accordance with industry standards for the records management industry. As such, we ask that LSUHSC remove this provision from any resulting contract and inform all Offerors of same so all may compete on the same basis. Section 2 – Specific Conditions, 2.6 Non-Compliance and Penalties
A. No, LSUHSC can be reasonable in regards to weather/traffic delays, however the penalty for lost boxes stands.

13. Will LSUHSC agree that due to the nature of storage services, a Vendor cannot stop or suspend such services until all materials stored with the Vendor have been permanently withdrawn. Therefore, no notice of termination shall be effective until materials have been permanently withdrawn and the related fees therefore paid in full. The Vendor shall work with LSUHSC in good faith to determine a schedule for such permanent withdrawal based on the volume of materials then being stored by Vendor. Section 20, Contract Cancellation

A. LSUHSC will provide sufficient notification if services are to be stopped or suspended. The service contract is for one year with the option to renew at initial bid pricing for up to five years.

14. Will all boxes need file level inventory indexing or will LSUHSC provide a detailed database of the box and it's contents?

A. Some boxes are simply marked on the outside of the box. Some have detailed descriptions. Winning bidder will have to coordinate with current vendor to transfer inventory detail information.

15. Can LSUHSC provide the average file count per box?

A. No, the average file count is unknown.

16. Can LSUHSC provide the service locations that boxes or files will need to be delivered to?

A. LSUHSC Campus in Downtown New Orleans

    433 Bolivar St.
    1901 Perdido St.
    1900 Gravier St.
    2020 Gravier St
    533 Bolivar St.
    2021 Perdido St.
    411 S. Prieur St.

LSUHSC Dental Campus
1100 Florida Ave.

Business Associate Contract Addendum

On this _____ day of _____, 200__, the undersigned, **[Name of Covered Entity]** ("Covered Entity") and **[Name of Business Associate]** ("Business Associate") have entered into this "Business Associate Contract Addendum" ("Addendum") for the purposes herein set forth.

1. Business Associate Relationship

(a)   Covered Entity and Business Associate are parties to that certain contract, denominated "[Name of underlying contract], dated _____ ("the Agreement"), and pursuant to which Business Associate is performing functions or tasks on behalf of Covered Entity.

(b)   Covered Entity is bound by the regulations implementing the Health Insurance Portability and Accountability Act of 1996, P. L. 104-191 ("HIPAA"), 45 C.F.R. Parts 160 and 164 ("the Privacy Rule"). The intent and purpose of this Addendum is to comply with the requirements of the Privacy Rule, including, but not limited to, the Business Associate contract requirements at 45 C.F.R. §§ 164.502(e) and 164.504(e).

(c)   In the performance of this Agreement, Business Associate is performing functions on behalf of Covered Entity which meet the definition of "Business Associate Activities" in 45 C.F.R. § 160.103, and therefore Business Associate is a "Business Associate" of Covered Entity.

(d)   In order for Business Associate to perform its obligations under the Agreement, Covered Entity must disclose to Business Associate certain Protected Health Information (as defined in 45 C.F. R. §164.501) that is subject to protection under HIPAA and the Privacy Rule.

NOW, THEREFORE in consideration of the mutual promises and covenants contained herein, and in furtherance of the mutual intent of the parties to comply with the requirements of the Privacy Rule, the parties agree as follows:

2. Definitions

(a)   Protected Health Information. "Protected Health Information" shall have the meaning found in 45 C.F.R. ' 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity. "Protected Health Information" may also be referred to as "PHI".

(b)   Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

Terms used in this Addendum, but not otherwise defined herein, shall have the same meaning as in the Privacy Rule.

3. Obligations and Activities of Business Associate

(a)   Business Associate agrees not to use or disclose PHI other than as stated in this Agreement this Addendum or as Required By Law.

(b)   Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for in this Addendum. Business Associate acknowledges receipt of a copy of Covered Entity's policies and procedures for safeguarding PHI, and agrees to implement substantially identical safeguards for PHI in its possession.

(c)   Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Addendum.

(d)   Business Associate agrees to report promptly to Covered Entity any use or disclosure of the PHI not provided for by this Addendum of which it becomes aware.

(e)   Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Addendum to Business Associate with respect to such information.

(f)   Business Associate agrees to provide access, at the request of Covered Entity, and in a prompt and timely manner, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements of 45 C.F.R. § 164.524.

(g)   Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of Covered Entity or an Individual.

(h)   Business Associate agrees to make its internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or to the Secretary, in a prompt and timely manner or as designated by the Secretary, for purposes of determining Covered Entity's compliance with the Privacy Rule.

(i)   Business Associate agrees to document such disclosures of PHI as would be required for Covered Entity to respond timely to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

(j)   Business Associate agrees that, in requesting PHI from Covered Entity, and in using or disclosing PHI to others, only the Minimum Necessary information shall be requested, used or disclosed.

4. Permitted Uses and Disclosures by Business Associate

(a)   Except as otherwise prohibited by law or limited in this Addendum, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity or the Privacy Rule, including, but not limited to the following:

1. Use or disclose PHI for proper management and administration or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached. Entities to which Business Associate discloses PHI for the purpose of management and administration of the Business Associate shall be deemed "agents" or "subcontractors" of Business Associate, within the meaning of Section 3(e) of this Addendum.

2. Use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. §164.504(e) (2) (i) (B).

5. Obligations of Covered Entity

(a)   Covered Entity shall notify Business Associate of any limitation(s) in its Notice of Privacy Practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI. Business Associate acknowledges that it has received a copy of Covered Entity's Notice of Privacy Practices, and agrees to comply with all limitations on use and disclosure of PHI contained therein.

(b)   Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

(c)   Covered Entity shall notify Business Associate of any changes in Covered Entity's Notice of Privacy Practices.

6. Term and Termination of Agreement

(a)   <u>Term.</u> The Term of this Addendum shall be effective as of the date of execution by the last party executing same, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

(b)   <u>Termination for Cause.</u> Notwithstanding any other provisions of this Agreement, upon Covered Entity's knowledge of a material breach by Business Associate of the terms of this Addendum, Covered Entity shall either:

      (1) Provide an opportunity for Business Associate to cure the breach. Covered Entity may terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;

      (2) Immediately terminate this Agreement if Business Associate has breached a material term of this Addendum and cure is not possible; or

      (3) If neither termination nor cure is feasible in the sole discretion of Covered Entity, Covered Entity shall report the violation to the Secretary

(c)   <u>Effect of Termination.</u>

      (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall not retain copies of any PHI. This provision shall also apply to PHI that is in the possession of subcontractors or agents of Business Associate.

      (2) In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall notify Covered Entity of this determination and its reasons. If Covered Entity agrees that return or destruction of PHI is not feasible, Business Associate shall extend the protections of this Addendum to such PHI and limit further uses and disclosures, for so long as Business Associate maintains such PHI. This provision shall also apply to PHI that is in the possession of subcontractors or agents of Business Associate.

7. Miscellaneous

(a) <u>Regulatory References</u>. Any reference in this Addendum to a section in the Privacy Rule means the section as in effect or as amended.

(b) <u>Formal Amendment and Deemed Amendment.</u> The Parties agree to take such action as is necessary to formally amend this Addendum from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191. Regardless of the execution of a formal amendment of this Addendum, the Addendum shall be deemed amended to permit the Covered Entity to comply with HIPAA and the Privacy Rule, as the same may be hereafter amended or interpreted.

(c) <u>Survival.</u> The respective rights and obligations of Business Associate under Section 6 (c) of this Addendum entitled "Effect of Termination" shall survive the termination of this Addendum and/or the Agreement.

(d) <u>Interpretation.</u> Any ambiguity in this Addendum shall be resolved to permit Covered Entity to comply with the Privacy Rule.

(e) <u>Material Breach of Addendum as Breach of Agreement.</u> Any material breach of this Addendum by Business Associate shall constitute a material breach of the Agreement, and shall entitle Covered Entity to any of the remedies provided in the Agreement, in addition to the remedies provided herein.

(f) <u>Provisions of Addendum to Control.</u> In the event of any conflict between the provisions of this Addendum and any of the other provisions of the Agreement, including any renewal, extension or modification thereof, the provisions of this Addendum shall control.

(g) <u>Ownership of PHI.</u> The PHI to which Business Associate, or any agent or subcontractor of Business Associate has access under the Agreement shall be and remain the property of Covered Entity.

(h) <u>Indemnification and Contribution.</u> Each party to this Addendum shall indemnify and hold the other harmless from any and all claims, liability, damages, costs and expenses, including attorney's fees and costs of defense and attorney's fees, resulting from the action or omission of the other party. In the event that any liability, damages, costs and expenses arise as a result of the actions or omissions of both parties, each party shall bear such proportion of such liability, damages, costs and expenses as are attributable to the acts or omissions of such party.

(i) <u>Injunctive Relief.</u> Notwithstanding any rights or remedies provided for in this Agreement, Covered Entity retains all rights to seek injunctive relief to prevent or stop the inappropriate use or disclosure of PHI directly or indirectly by Business Associate, or any agent or subcontractor of Business Associate.

(j) <u>Attorney's Fees.</u> If any legal action or other proceeding is brought for the enforcement of this Addendum or in connection with any of its provisions, the prevailing party shall be entitled to an award for the attorney's fees and costs incurred therein in addition to any other right of recovery.

(k) <u>Severability.</u> If any clause or provision of this Addendum is held to be illegal, invalid or unenforceable under any present or future law, the remainder of this Addendum will not be affected thereby. It is the intention of the parties that, if any such provision is held to be illegal, invalid or unenforceable, there will be substituted in lieu thereof a provision as similar in terms to such provision as is possible which is legal, valid and enforceable.

(l) <u>Waiver of Provisions.</u> Failure by either party at any time to enforce or require the strict performance of any of the terms and conditions of this Agreement shall not constitute a waiver of such terms or conditions or modify such provision or in any manner render it unenforceable as to any other time or as to any other occurrence. Any specific waiver by either party of any of the terms and conditions of this Agreement shall be considered a one-time event and shall not constitute a continuing waiver. Neither a waiver nor any failure to enforce shall in any way affect or impair the terms or conditions of this Agreement or the right of either party to avail itself of its remedies.

(m) <u>Choice of Law.</u> To the extent not preempted by HIPAA or the Privacy Rule, the Laws of the State of Louisiana shall govern this Addendum.

(n) <u>Notices.</u> Any notice, demand or communication required or permitted to be given by any provision of this Addendum shall be in writing and will be deemed to have been given when actually delivered (by whatever means) to the party designated to receive such notice, or on the next business day following the day sent by overnight courier, or on the third (3rd) business day after the same is sent by certified United States mail, postage and charges prepaid, directed to the addresses noted below, or to such other or additional address as any party might designate by written notice to the other party, whichever is earlier.

Notices required by this Addendum shall be sent as follows:

Covered Entity:
[Name]
[Institution]
[Address]
[City, State Zip Code]

Business Associate:
[Name]
[Institution]
[Address]
[City, State Zip Code]

Copy to: Copy to:
[Name]   **[Name]**
[Institution]   **[Institution]**
[Address]   **[Address]**
[City, State Zip Code]   **[City, State Zip Code]**

THUS DONE AND SIGNED on the date first written above:

[Name of Covered Entity]:

_____
By:

_____
Title: